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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,575	11/01/2001	Antonio Carlos Ribeiro Carvalho	J&J-2045	2649
27777 7590 03/07/2007 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT	PAPER NUMBER
			3761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
2 MONTHS		03/07/2007	PAPER	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/040,575
Filing Date: November 01, 2001
Appellant(s): CARVALHO ET AL.

Paul J. Higgins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 November 2006 appealing from the Office action mailed 7 February 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0077618 A1	MOLAS	6-2002
5,713,886	STURINO	2-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molas (US 2002/0077618 A1) in view of Sturino (5,713,886).

Molas discloses all aspects of the claimed invention with the exception of a flap extending outwardly from each side edge. Molas discloses a sanitary napkin, as shown in figure 1, comprising a central absorbent pad having a liquid pervious cover layer, a liquid impervious barrier layer, and an absorbent core, as described on page 2, paragraph 0022. The absorbent core 3 is continuously tapered from the second end to the first end, as shown in figure 2, and the barrier and cover extend beyond the core 3 to cover side margins 4 and 5. The central absorbent pad further comprises two bending lines 2 converging toward the longitudinal center line, the bending lines 2 being defined by the edges of the core 3, as shown in figure 2. A pair of side margins 4 and 5 are adjacent the bending lines 2 and adapted to fold along the lines. The napkin has a first, unfolded configuration for use in brief style undergarments, and a second, folded configuration for use in thong style undergarments, as described on page 3, paragraph 0033.

Sturino teaches the use of side flaps placed towards the front of a tapered sanitary napkin designed to be used with thong style undergarments, as shown in figure 1. The side flaps prevent leakage and improve the security of the attachment of the napkin to a garment. It would therefore be obvious to one of ordinary skill in the art at

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the time of invention to provide the napkin of Molas with the side flaps of Sturino to prevent leakage and improve attachment.

With respect to claims 2 and 3, the bending lines 2 extend from the second distal end at the lateral centerline to the first distal end, as shown in figure 1.

With respect to claims 4, 5, 8, and 9, Molas remains silent as to the dimensions of the sanitary napkin. However, it would have been obvious to one of ordinary skill in the art at the time of invention to make the first distal end between 15 and 20 mm and the lateral dimension between 10 and 20 mm, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 7, the side margins 4 and 5 has an adhesive attachment on the garment-facings side of the barrier layer, as described on page 3, paragraph 0037.

With respect to claim 10, the side margins 4 and 5 of the central absorbent pad are folded along the bending lines 2.

With respect to claim 11, the first configuration is an hourglass shape, as shown in figure 1, and when folded, the second configuration is a tapered shape.

(10) Response to Argument

The Appellant's arguments have been considered but are not persuasive.

In response to the Appellant's argument that Molas discloses a pantiliner having different areas separated by embossing, it is noted that Molas discloses in Paragraph [0036] that the different areas, side areas 4 and 5, and central area 3, comprise different material, the material of side areas 4 and 5 being thinner than the material of central

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area 3. Molas therefore discloses a central absorbent core 3 that is separate from the side areas 4 and 5 by both embossed lines 2 and by different material characteristics.

In response to the Appellant's argument that Molas fails to disclose a description of the structural details of the cover, core, and barrier, it is noted that Molas describes the structural details of the napkin in Paragraph [0007], stating that the napkin comprises cover and barrier layers, and a core located therebetween. The absorbent core 3, as discussed in the previous paragraph, does not extend to the lateral side edges of the napkin, as shown in figure 1, and therefore the cover and barrier layers that extend into side areas 4 and 5 will extend beyond the core 3, as required by the present claims.

In response to the Appellant's argument that the central area 3 of Molas is not continuously tapered from the second end towards the first end, it is noted that the embossing lines 2 of Molas are shown in both figures 1 and 2 to be tapered in relation to the lateral side edges of the napkin. The Examiner maintains the position that the lines 2 of Molas are not "slightly diverging or at most parallel" at the lower end of the napkin, but rather continue to converge along their entire length, as shown in figures 1 and 2. Further, it is noted that the present claims require the core to be "continuously tapered from the second end towards the first end," not from the second end to the first end. Therefore, even if the embossed lines 2 of Molas, which define the side edges of the core 3, are parallel at the extreme lower end of the napkin, the lines 2 are continuously tapered from the second end in the direction of, or *towards*, the first end, as required by the present claims.

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In response to the Appellant's argument that Sturino discloses flaps placed towards the front of the napkin, not at the lateral centerline, it is noted that the present claims disclose flaps located at the lateral centerline of the central absorbent pad, not the lateral centerline of the entire sanitary napkin. Sturino shows in figure 1 a sanitary napkin having a central absorbent pad L2, and a pair of flaps 26 and 28 located along the lateral centerline of the central absorbent pad L2. Sturino therefore fulfills the limitations of the present claims pertaining to the flaps, and Molas as modified by the teaching of Sturino fulfills all claimed limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson



Conferees:

Tanya Zalukaeva



Angela Sykes

